

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Brokate	Team: Team # 2	CCRB Case #: 201001754	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/03/2010 8:38 PM	Location of Incident: Cooper Avenue & Cypress Avenue.	Precinct: 104	18 Mo. SOL 8/3/2011	EO SOL 8/3/2011	
Date/Time CV Reported Wed, 02/03/2010 8:38 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/08/2010 10:32 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Leonbravo	10471	938847	NARCBBN
2. POM Matthew Zito	15264	937792	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Leonbravo	Abuse: PO Juan Leonbravo stopped the car in which § 87(2)(b) was an occupant.	
B.POM Matthew Zito	Abuse: PO Matthew Zito stopped the car in which § 87(2)(b) was an occupant.	
C.POM Juan Leonbravo	Force: PO Juan Leonbravo pointed his gun at § 87(2)(b)	
D.POM Matthew Zito	Abuse: PO Matthew Zito frisked § 87(2)(b)	
E.POM Matthew Zito	Abuse: PO Matthew Zito searched the car in which § 87(2)(b) was an occupant.	
F.POM Juan Leonbravo	Abuse: PO Juan Leonbravo threatened to arrest § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

The following complaint was filed by § 87(2)(b) on February 3, 2010 via telephone at IAB and was forwarded to the CCRB on February 8, 2010, via IAB log number 10-06110 (Encl. 6).

On February 3, 2010, at approximately 8:38 pm, § 87(2)(b) and his son, also named § 87(2)(b) were driving in the vicinity of Cooper Avenue and Cypress Avenue in Queens. For the purposes of this report, the complainants/victims will be referred to as § 87(2)(b) and § 87(2)(b). They were stopped by two plainclothes officers who have been identified through investigation as PO Juan Leonbravo and PO Matthew Zito of Patrol Borough Brooklyn North Narcotics. The following allegations resulted from the officers' actions:

- **Allegation A – Abuse of Authority:** PO Juan Leonbravo stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.
- **Allegation B – Abuse of Authority:** PO Matthew Zito stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation C – Force:** PO Juan Leonbravo pointed his gun at § 87(2)(b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation D – Abuse of Authority:** PO Matthew Zito frisked § 87(2)(b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E – Abuse of Authority:** PO Matthew Zito searched the car in which § 87(2)(b) was an occupant. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation F – Abuse of Authority:** PO Juan Leonbravo threatened to arrest § 87(2)(b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old, 6'1" tall, 165 pound, black/Hispanic male with black hair and brown eyes.

CCRB Testimony

§ 87(2)(b) provided a statement at the CCRB on February 25, 2010 (Encl. 8A-8D).

§ 87(2)(g)

On February 3, 2010, at approximately 8:38 pm, § 87(2)(b) was driving with his son, § 87(2)(b) who was in the front passenger seat, in the vicinity of Cooper Avenue and Cypress Avenue in Queens. § 87(2)(b) went to make a right onto Cypress Avenue and was stopped at a red light with approximately 2-3 vehicles in traffic ahead of him. § 87(2)(b) drives a gray, four door, 1996 Mercury Marquis. § 87(2)(b) stated that he was obeying all the traffic laws and had not committed any traffic infractions up to that point. After a couple of seconds, a white or silver, unmarked van, came cutting across traffic and came to a stop in front of § 87(2)(b)'s vehicle. The driver door opened and an officer identified through investigation as PO Juan Leonbravo of Patrol Borough Brooklyn North Narcotics, exited the vehicle with his gun drawn and pointed in the direction of § 87(2)(b)'s vehicle.

PO Leonbravo crossed in front of the vehicle and the gun remained pointed until PO Leonbravo reached § 87(2)(b)'s drivers side of the vehicle. § 87(2)(b) took his hands off of his steering wheel and asked PO Leonbravo, "What's going on?" PO Leonbravo told § 87(2)(b) to turn his car off and § 87(2)(b) did so. However, in his initial complaint made to IAB on February 3, 2010, § 87(2)(b) stated that PO Leonbravo told him, "Shut the fuck up," something that § 87(2)(b) did not allege in his official CCRB statement. PO Leonbravo then asked § 87(2)(b) for his keys and § 87(2)(b) handed him the keys. PO Leonbravo instructed § 87(2)(b) to exit his vehicle and § 87(2)(b) did so. PO Leonbravo holstered his weapon and instructed § 87(2)(b) to walk to the rear of his vehicle. When § 87(2)(b) reached the rear of his vehicle, he stood and faced away from his vehicle. PO Leonbravo asked § 87(2)(b) for his license and § 87(2)(b) provided it to PO Leonbravo. § 87(2)(b) kept asking PO Leonbravo what was going on and each time he did, PO Leonbravo told him, "Shut up."

After approximately five minutes, an officer who has been identified as PO Matthew Zito of Patrol Borough Brooklyn North Narcotics escorted § 87(2)(b)'s son to the rear of the vehicle. § 87(2)(b) and § 87(2)(b) stood at the rear of the vehicle, facing away from the vehicle, with their hands up for another five minutes. During that time PO Leonbravo stood with § 87(2)(b) and § 87(2)(b) and PO Zito retreated back towards § 87(2)(b)'s vehicle. § 87(2)(b) could not see what PO Zito was doing during this time. § 87(2)(b) continually asked PO Leonbravo what was going on and PO Leonbravo told § 87(2)(b) again to, "Shut up." PO Leonbravo also asked § 87(2)(b) if he wanted to go to jail and told § 87(2)(b) that he had been speeding. § 87(2)(b) informed PO Leonbravo that he and his son were heading home from the barber shop. PO Leonbravo asked § 87(2)(b) where the barber shop was located. Shortly thereafter, PO Zito walked back to the rear of the vehicle. PO Leonbravo threw § 87(2)(b)'s license onto the trunk and he and PO Zito began to walk back towards the van. As they did this, § 87(2)(b) and § 87(2)(b) walked back to the driver and front passenger seat portion of

the vehicle. § 87(2)(b) saw that that papers that had been stored in the visor, glove compartment and various compartments in the vehicle, were strewn about the vehicle. Before PO Leonbravo reached his van, he told § 87(2)(b) that this time he was getting off with a warning. PO Leonbravo and PO Zito then departed the scene.

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old, 5'9" tall, 132 pound, black male with black hair and brown eyes.

CCRB Testimony

§ 87(2)(b) provided a statement at the CCRB on February 25, 2010 (Encl. 9A-9C). On February 3, 2010, at approximately 8:38 pm, § 87(2)(b) and his father, § 87(2)(b) were driving in the vicinity of Cypress Avenue and Cooper Avenue in Queens. § 87(2)(b) was stopped at a red light, waiting to make a right turn onto Cypress Avenue. § 87(2)(b) stated that his father had not been speeding and had not committed any traffic infractions prior to being stopped by officers. A white or silver van pulled up alongside of the § 87(2)(b) vehicle. It came to a stop and an officer who has been identified as PO Juan Leonbravo of Patrol Borough Brooklyn North Narcotics, exited the drivers side of the vehicle. § 87(2)(b) did not recall if PO Leonbravo had a gun drawn or pointed at the § 87(2)(b) vehicle as he approached it.

PO Leonbravo approached the driver side of the § 87(2)(b) vehicle and told § 87(2)(b) to turn the car off. While § 87(2)(b) was still in the vehicle, PO Leonbravo asked him questions such as where he was going and where he was coming from. PO Leonbravo then ordered § 87(2)(b) out of the vehicle and told § 87(2)(b) to give him the keys. § 87(2)(b) complied. An officer who has been identified as PO Matthew Zito of Patrol Borough Brooklyn North Narcotics exited the front passenger side of the van and approached § 87(2)(b)'s side of the vehicle and was standing next to § 87(2)(b)'s side of the vehicle while PO Leonbravo talked to § 87(2)(b). PO Leonbravo walked his father to the rear portion of the vehicle and PO Zito ordered § 87(2)(b) to step out of the vehicle. § 87(2)(b) did so. After he did this, PO Zito patted down § 87(2)(b) around his waistband and also patted down his front coat pockets. He did not reach into or remove any items from § 87(2)(b)'s coat pockets. PO Zito then escorted § 87(2)(b) to the rear of the vehicle where his father was standing. § 87(2)(b) and § 87(2)(b) stood and faced away from the vehicle.

§ 87(2)(b) was asking PO Leonbravo why he had been stopped and PO Leonbravo told § 87(2)(b) that he had been speeding and repeatedly told § 87(2)(b) "Shut up." § 87(2)(b) did not recall PO Leonbravo threatening to arrest § 87(2)(b) or asking him if he wanted to spend the night in jail. PO Zito then retreated back towards the § 87(2)(b) vehicle. § 87(2)(b) could not see what PO Zito was doing. After a couple of minutes, PO Zito went and stood next to PO Leonbravo. PO Leonbravo gave § 87(2)(b) back his license and told § 87(2)(b) that this time he was being let go with a warning. PO Leonbravo and PO Zito then departed the scene. When § 87(2)(b) and § 87(2)(b) returned to their vehicle, § 87(2)(b) noticed that papers that had been neatly stored in various visors and compartments of the vehicle, including the glove compartment, were now strewn about the interior of the vehicle.

NYPD Statement(s):

Subject Officer: PO MATTHEW ZITO

- *PO Zito is a 6'2" tall, 240 pound, white male with brown hair and brown eyes.*
- *On February 3, 2010, PO Zito worked from 2:33 pm until 11:00 pm. He was in plainclothes, working with PO Juan Leonbravo and assigned to an unmarked grey van. PO Zito was assigned to narcotics enforcement.*

Memo Book

PO Zito had no memo book entries regarding this incident (Encl. 10A-10B).

CCRB Testimony

PO Zito provided a statement at the CCRB on April 22, 2010 (Encl. 11A-11B). On February 3, 2010, at approximately 8:38 pm, PO Zito and PO Leonbravo were parked in their vehicle, observing the area around Knickerbocker Avenue and Troutman Avenue in Brooklyn. PO Zito did not recall who was driving that day. PO Zito and PO Leonbravo were investigating this location as a drug prone location. While observing the stores located at the intersection of Troutman and Knickerbocker Avenue, PO Zito observed § 87(2)(b) standing on the sidewalk and talking with approximately 3-4 males. PO Zito observed § 87(2)(b) from inside the parked van that was parked on the opposite side of the street. PO Zito did not recall how many feet he was parked from § 87(2)(b) but stated that this is a well lit commercial and residential area. While they observed § 87(2)(b) he appeared to be nervous and was moving around quickly and PO Zito stated that in his experience, behavior such as this is indicative of an individual attempting to buy drugs or sell drugs. PO Zito did not see § 87(2)(b) exchange any money or goods with the 3-4 males he was standing with although § 87(2)(b) did leave his view a couple of times. § 87(2)(b) did not enter any stores while PO Zito and PO Leonbravo observed him. PO Zito did not observe § 87(2)(b)'s son at this time. After about 5 minutes, § 87(2)(b) approached his vehicle, a sedan, which was parked on the same side of the street that the van was parked, a couple cars ahead of the van, and entered the driver's seat of his parked vehicle. § 87(2)(b) then pulled out of the parking spot at a high rate of speed, and sped off.

PO Zito stated that due to § 87(2)(b)'s prior behavior and due to the high rate of speed at which he left the area, he and PO Leonbravo made the mutual decision to follow him and conduct a car stop for further investigation. PO Zito stated that the officers followed § 87(2)(b) for approximately 10 minutes before they were able to stop him and that while § 87(2)(b) was driving away, he was speeding and driving erratically by weaving in and out of traffic. They were finally able to stop § 87(2)(b) when he was stopped at a red light. The officers turned on the red light in their vehicle, stopped the vehicle behind § 87(2)(b) and exited the vehicle.

PO Zito stated that although he did not recall if he approached the drivers side or the passenger side of the vehicle, he may have approached the passenger side of the vehicle. PO Leonbravo approached the driver's side. When the officers reached the vehicle, PO Leonbravo and PO Zito told § 87(2)(b) and his son, § 87(2)(b) who was in the front passenger seat of the vehicle, that they were police officers and requested that § 87(2)(b) turn off the vehicle, which he did. § 87(2)(b) appeared to be upset at being stopped and was yelling, although PO Zito did not recall exactly what was said. PO Zito asked § 87(2)(b) to step

out the vehicle. For his safety, PO Zito frisked § 87(2)(b) after he was out of the vehicle. PO Zito frisked § 87(2)(b) on his waistband and coat pockets and the frisk lasted approximately ten seconds. He then walked § 87(2)(b) to the rear of the vehicle. PO Zito did not know if § 87(2)(b) was frisked by PO Leonbravo but that § 87(2)(b) was also standing at the rear of the vehicle.

PO Zito asked § 87(2)(b) if he knew where the paperwork for the car was. § 87(2)(b) indicated to PO Zito that the paperwork was stored in the glove compartment. PO Zito then went and looked inside the interior of the vehicle on the front passenger side. PO Zito opened the glove compartment and removed the documentation papers for the vehicle, looked at them and replaced them. He also looked under the seats and on the floor for any weapons or contraband but did not search these areas or open the center console in the vehicle. PO Zito also stated that he only inspected the passenger side of the vehicle, and was unaware if PO Leonbravo looked in or searched the driver's side of the vehicle. PO Zito also stated that he did not leave the interior of the vehicle littered with papers and that he did not see his partner do this either.

PO Zito then walked back to the rear of the vehicle. § 87(2)(b) told the officers he was coming from the barbershop. PO Zito did not hear PO Leonbravo threaten to arrest § 87(2)(b) or ask him if he wanted to spend the night in jail. § 87(2)(b) gave his identification to PO Leonbravo. § 87(2)(b) appeared to be upset at being stopped and the officers told § 87(2)(b) that he was stopped because he was speeding. Once it was established that no crime had been committed and no contraband was present, the officers told § 87(2)(b) he was free to go and they told § 87(2)(b) that he was being let off with a warning for speeding.

Subject Officer: PO JUAN LEONBRAVO

- PO Leonbravo is a § 87(2)(b)-old, 5'10" tall, 175 pound, Hispanic male, with black hair and green eyes.
- On February 3, 2010, PO Leonbravo worked from 2:33 pm until 11:00 pm. He was in plainclothes and assigned to the prisoner van. He was working with PO Matthew Zito.

Memo Book

PO Leonbravo had no memo book entries regarding this incident (Encl. 12A-12C).

CCRB TESTIMONY

PO Leonbravo provided a statement at the CCRB on May 11, 2010 (Encl. 13A-13B). On February 3, 2010, at approximately 8:38 pm, PO Leonbravo and PO Zito were sitting in their vehicle and observing a drug prone location in Bushwick, Brooklyn. PO Leonbravo did not recall if he was in the driver seat or passenger seat. PO Leonbravo and PO Zito were watching an area that they stated was a Kite location, and that one of the stores they were observing at the location was reportedly selling drugs out of the location. PO Leonbravo did not remember the name or the exact address of the location. PO Leonbravo stated that as they were observing the location, they saw § 87(2)(b) and his son exit a barbershop or a neighboring store at this location, head straight for their vehicle and enter the vehicle.

PO Leonbravo stated that while he observed § 87(2)(b) and his son, he did not see either one of them speak or come into physical contact with any other individuals on the street. PO Leonbravo also stated that he did not observe § 87(2)(b) in what appeared to be a drug transaction.

Once § 87(2)(b) and his son entered the vehicle, which was parked a couple vehicles in front of the prisoner van, § 87(2)(b) drove away from the area at a high rate of speed. PO Leonbravo stated that the speed limit in the area was approximately 20-30 mph, and § 87(2)(b) § 87(2)(b) drove away at what he estimated to be double the speed limit. Because of § 87(2)(b) § 87(2)(b)'s quick departure from the scene and because as the officers observed § 87(2)(b) § 87(2)(b) speed away, § 87(2)(b) § 87(2)(b) drove through a stop sign without stopping, PO Leonbravo stated that he thought that maybe § 87(2)(b) § 87(2)(b) was intoxicated or under the influence of drugs. He stated that he did not observe § 87(2)(b) § 87(2)(b) act in any way that would indicate he was under the influence of drugs prior to seeing him enter the vehicle. The officers pursued § 87(2)(b) § 87(2)(b) in their vehicle for approximately three to five minutes and during that time, they observed § 87(2)(b) § 87(2)(b) run a red light and pass through additional stop signs without stopping. They were finally able to stop § 87(2)(b) § 87(2)(b)'s vehicle when he was stopped at a red light. The officers put on their dash light and exited their vehicle to approach § 87(2)(b) § 87(2)(b).

PO Leonbravo stated that he did not recall which side of the vehicle he approached but neither he nor his partner had their weapons drawn or pointed while approaching the vehicle. As they approached the vehicle, PO Leonbravo and PO Zito gave § 87(2)(b) § 87(2)(b) various verbal commands to turn off his vehicle and verbally identified themselves as police officers.

§ 87(2)(b) § 87(2)(b) was irate at being stopped and was yelling loudly at the officers and using profanity towards them, although PO Leonbravo did not recall specifically what § 87(2)(b) § 87(2)(b) said. § 87(2)(b) § 87(2)(b) was asked to step out of the vehicle first, although PO Leonbravo did not recall if it was him or his partner who asked § 87(2)(b) § 87(2)(b) to do this. § 87(2)(b) § 87(2)(b) was escorted to the rear of his vehicle and it was there that § 87(2)(b) § 87(2)(b) provided his identification to the officers. § 87(2)(b) § 87(2)(b)'s son was also asked to step out of the vehicle and escorted to the rear of the vehicle. PO Leonbravo did not recall he did this or if PO Zito did this.

PO Leonbravo did not recall if § 87(2)(b) § 87(2)(b) or his son were frisked. § 87(2)(b) § 87(2)(b) was acting belligerent towards the officers. PO Leonbravo did not tell § 87(2)(b) § 87(2)(b) to "Shut up," or he would go to jail. He did not witness his partner do this either. One of the officers did look in the vehicle for contraband or an open liquor bottle, however, PO Leonbravo did not recall if it was him who did this or PO Zito. He did not recall looking through any papers located in the visor of the vehicle or opening the glove compartment to look through papers. He did not recall seeing his partner do this either. PO Leonbravo stated that from § 87(2)(b) § 87(2)(b)'s behavior, steady gait and due to the fact that he did not smell any alcohol on § 87(2)(b) § 87(2)(b) he determined that § 87(2)(b) § 87(2)(b) was not intoxicated. No field sobriety tests were performed on § 87(2)(b) § 87(2)(b). Although he observed § 87(2)(b) § 87(2)(b) speed, run a red light and pass through multiple stop signs without stopping, he and PO Zito decided to not summons § 87(2)(b) § 87(2)(b) and told him he was being let go with a warning.

NYPD Document(s)

Tactical Plan

According to the tactical plan for February 3, 2010, PO Zito and PO Leonbravo were assigned to an unmarked grey Ford prisoner van. The color of the day was green and the officers assigned to the Patrol Borough Brooklyn North Narcotics were conducting buy and bust operations. The team

supervisor for February 3, 2010 was Sgt. William Sommer and the arresting officer was listed as Det. Michael Separ (Encl. 14).

Roll Call

According to Patrol Borough Brooklyn North Narcotics roll call for February 3, 2010, PO Leonbravo and PO Zito were on duty and worked from 2:30 pm until 11:00 pm (Encl. 15).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to the incident (Encl. 17C).

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- Because § 87(2)(b) is a minor, his criminal conviction record was not available.

Civilian(s) CCRB History

- § 87(2)(b) has not participated in any other CCRB investigations (Encl. 4).
- § 87(2)(b) has not participated in any other CCRB investigations (Encl. 5).

Subject Officer(s) CCRB History

- PO Matthew Zito has been a member of the service for five years and there are no substantiated CCRB allegations against him (Encl. 2A-2B).
- PO Juan Leonbravo has been a member of the service for four years and there are no substantiated CCRB allegations against him (Encl. 3).

Conclusion

Identification of Subject Officer(s)

PO Matthew Zito acknowledged his interaction with § 87(2)(b) and § 87(2)(b)

PO Juan Leonbravo acknowledged his interaction with § 87(2)(b) and § 87(2)(b)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Juan Leonbravo stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B: Abuse of Authority: PO Matthew Zito stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants

§ 87(2)(b) stated that he was stopped by PO Zito and PO Leonbravo in his vehicle. He stated that he had not been speeding and had not committed any traffic infractions prior to being stopped by the officers. § 87(2)(b) corroborated this.

It is not in dispute that § 87(2)(b)'s vehicle was stopped by PO Zito and PO Leonbravo. § 87(2)(g)

According to PO Zito and PO Leonbravo, § 87(2)(b) drove away from the area in which he was initially observed at a high rate of speed. PO Leonbravo estimated this speed to be about

double the legal speed limit § 87(2)(g)

There is a lack of documentation regarding § 87(2)(b)'s alleged speeding, including a lack of summons for such violation and a lack of any memo book entries on part of either officer regarding § 87(2)(b)'s speeding. Also, § 87(2)(b) denies speeding and his son, § 87(2)(b) who was also in the vehicle at the time of this incident, denies that his father sped while driving on this incident date.

§ 87(2)(g)

PO Zito stated that § 87(2)(b) was "driving erratically" and changing lanes frequently. However, PO Leonbravo indicated that § 87(2)(b) ran a red light and passed through additional stop signs without stopping, something that PO Zito did not indicate. Again, § 87(2)(b) was not summonsed for these alleged multiple traffic infractions § 87(2)(g). § 87(2)(b) also denied committing any traffic infractions and his son corroborated this.

PO Zito stated that prior to observing § 87(2)(b) enter his vehicle and speed away, he observed § 87(2)(b) standing on the sidewalk and talking with approximately 3-4 males. He also stated that § 87(2)(b) appeared to be nervous and was moving around quickly. PO Zito did not see § 87(2)(b) exchange any money or goods with the 3-4 males or come into physical contact with them and § 87(2)(b) did not enter any stores. Despite the fact that PO Leonbravo did not corroborate seeing § 87(2)(b) interact with any individuals prior to entering his physical, the fact remains that PO Zito stated that he stopped § 87(2)(b)'s vehicle because of what he deemed to be suspicious conduct and because he observed § 87(2)(b) speed away from the scene.

§ 87(2)(g)

According to People v. Ferry, 543 N.Y.S. 2d 779 (1989), innocuous behavior by itself will not generate a founded or reasonable suspicion that a criminal act is at hand (Encl. 1B). § 87(2)(g)

§ 87(2)(g)

PO Leonbravo also stated that one of the locations near to where § 87(2)(b) had exited was a location thought to be selling drugs. However, PO Leonbravo was not able to specify that exact location, nor was he able to say definitively that § 87(2)(b) had visited that location. § 87(2)(g)

In People v. Cornelius, 497 N.Y.S. 2d 16 (1986), the court ruled that innocuous behavior in a high crime area does not expand the powers of the police to the detriment of the individuals who happen to live, work in, or are passing through such an area (Encl. 1C).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: PO Juan Leonbravo pointed his gun at § 87(2)(b)

§ 87(2)(b) alleged that as PO Juan Leonbravo approached his vehicle, he had his gun pointed at § 87(2)(b). PO Leonbravo denies this, as does PO Zito. § 87(2)(b) stated that he did not recall seeing either officer have his firearm drawn or pointed at the § 87(2)(b) vehicle.

§ 87(2)(g)

Allegation D – Abuse of Authority: PO Matthew Zito frisked § 87(2)(b)

It is undisputed that PO Zito frisked § 87(2)(b). PO Zito stated that he did frisk § 87(2)(b) for his own safety.

§ 87(2)(g)

§ 87(2)(b) An officer may not frisk an individual merely because he has the right to stop him. Rather, the officer must have an independent reasonable suspicion that this person is armed (See CPL 140.50(3), (Encl. 1D).

§ 87(2)(g)

According to People v. Debour, 40.NY.2d 210 (1976) (Encl. 1E), an officer has the authority to frisk an individual for a weapon only when the officer reasonably suspects himself to be in danger of physical injury.

§ 87(2)(g)

Allegation E – Abuse of Authority: PO Matthew Zito searched the car in which § 87(2)(b) was an occupant.

Both § 87(2)(b) and § 87(2)(b) stated that they returned to the vehicle to find various papers that had been stored in the visor and the glove compartment, strewn about the interior of the vehicle. Because of the direction that they were facing, they were unable to see how the vehicle was searched, but it was evident from the state of the papers inside the vehicle that PO Zito had in fact searched the vehicle.

PO Zito admitted to opening the glove compartment, removing and examining the official vehicle papers after § 87(2)(b) indicated to him that the papers for the vehicle were stored there. He also stated that these papers were returned to where he found them in the glove compartment and that he did not leave papers all around the vehicle. PO Zito stated that he did not search any other portion of the vehicle or remove any papers stored in the overhead visors. PO Zito also stated that he only examined the front passenger portion of the vehicle and at no time did he or his partner search the driver side of the vehicle. PO Leonbravo stated that either he or his partner

looked in the interior of the vehicle for contraband but they only looked for items in plain view and the vehicle was not searched. However, § 87(2)(b) made no indication that either officer asked him where the papers were stored in the vehicle. § 87(2)(b) made no indication of this either.

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Abuse of Authority: PO Juan Leonbravo threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that after asking PO Leonbravo why he was stopped, PO Leonbravo asked § 87(2)(b) if he wanted to spend the night in jail. PO Leonbravo denied doing this and PO Zito stated that he did not hear PO Leonbravo do this either. § 87(2)(b) also stated that he did not recall PO Leonbravo threatening to arrest his father.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: _____

:

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date